EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

BEARBOX LLC and AUSTIN STORMS, Plaintiffs, v. LANCIDM LLC, MICHAEL T. MCNAMARA, and RAYMOND E. CLINE, JR. Defendants.	)))))))	C.A. No. 21-534-MN-CJB

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Wilmington, Delaware
Thursday, October 20, 2022
Markman Transcript

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BEFORE: HONORABLE GREGORY B. WILLIAMS
UNITED STATES DISTRICT COURT JUDGE

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APPEARANCES:

ASHBY & GEDDES
BY: ANDREW C. MAYO, ESQ.

-and-

MARSHALL, GERSTEIN & BORUN LLP
BY: BENJAMIN T. HORTON, ESQ.

For the Plaintiffs

BARNES & THORNBURG LLP
BY: CHAD S.C. STOVER, ESQ.
MARK C. NELSON, ESQ.
ADAM M. KAUFMANN, ESQ.

For the Defendants

in our papers?

MR. HORTON: I wouldn't say that it is inconsistent, Your Honor, I think it's an attempt to try to simplify the issues for the Court in the sense that we can reach a construction that everyone can agree on and so we can advance the case. I don't think it's inconsistent, I think it might be an attempt at a compromise.

THE COURT: Okay.

MR. HORTON: The struck through language below minimum power threshold, Your Honor, is a combination of some redundancy, it's further describing a minimum power threshold. It includes a limitation that we think is being read into the claims that is not present in the plain language of the claims, and that is the requirement that the load must use at least the amount of power subject to the option. I'll explain a little bit why that's the case.

Looking at representative Claim 1, Your Honor, the claims do not require power consumption. There's no limitation here that they do. I don't think anyone is contesting or, you know, doesn't realize that the typical context in which this invention would be used is one in which power is consumed. But the claims don't require it, the claims require a set of computing systems, a control system configured to monitor conditions, receive power option data based on a power option agreement, set minimum

power thresholds, link those minimum power threshold to time intervals, determine a performance strategy, and then set power consumption targets based on the performance strategy and then provide instructions. At no point in the claim does it say power is consumed. It stops short of that. So reading in that limitation we think would run afoul of one of the canons of claim construction.

And so a little bit more walking through why we're proposing to strikethrough the last half of the purposed construction that Lancium has proffered.

We think the first part of the construction takes care of all of it, where it says: "The delivery of power to a load where the load provides the power entity with the option to reduce the amount of power delivered..."

If delivery of power is reduced by X, then it necessarily follows that X amount of power is already being delivered. It doesn't need to be any more complicated than that.

It's unclear what Lancium means by "use" in the struck through language; use of power is not required by the claims. And the word "use" is inconsistent with the patent's repeated discussion of consumption to the extent those two terms are different.

And, finally, power can be consumed in crypto mining as taught in the patent -- and, again, this is not

buy power at a certain price is much closer to a power purchase agreement; it reads the option out of power option agreement completely.

Thank you, Your Honor.

THE COURT: Question for you, Mr. Nelson.

MR. NELSON: Yes.

THE COURT: You saw BearBox's proposed, I guess, compromise in terms of striking -- deleting some of the language at the end of Lancium's proposed construction.

What's Lancium's response to that?

MR. NELSON: Your Honor, I did see it briefly. I haven't had a full chance to digest it because we did not exchange slides in advance, so this was new.

THE COURT: Okay.

MR. NELSON: And I did not know about that compromise in advance.

THE COURT: Okay.

MR. NELSON: We certainly would consider it. And we're glad that at least they seem to agree with the first half of our definition. But I think from Lancium's perspective what's important here -- the terms "power option agreement" and "minimum power threshold," they somewhat interrelate. And the idea here is this system that is the '433 patent discusses helping to balance the grid. And you balance the grid by committing to use that amount of power

systems to perform one or more computational operations. What the claim does not say is the computing systems wherein perform computation operations. The system here that's being claimed is setting it all up; it's setting the table for what happens next.

And, again, this is just sort of a slide to remind me, Your Honor, to state, again, that our position -- and we've laid this out in the summary judgment briefing -- is that even under Lancium's proposed plain and ordinary meaning for these terms, which is large, unwieldy, and at times redundant, we think reading in a limitation, is still not dispositive on summary judgment.

We've laid out our case that Dr. McClellan, the evidence supports conception and communication of that invention to Lancium, even if "use" is read into the claims.

Any questions, Your Honor?

THE COURT: Not at this time.

MR. HORTON: Thank you.

MR. NELSON: So let's go to slide 33. And so really what a lot of this dispute boils down to is trying to read the -- at least in our view, the purpose of the patent out of the patent.

The whole idea of the structure that's set up in Claim 1 is that you have a system that requires ultimately the load to use a certain amount of power. Because if the

power threshold, it's the amount of power that load must use during the time interval. That's what the structure of Claim 1 and the other claims is setting up; that in order to operate in accordance with the claim, the structure of the transaction is the minimum power threshold is the amount of power that the load must use during an associated time interval.

It's not enough to just purchase it, it's not enough that it's delivered because it could be sold back. And that's what BearBox's argument is, well, selling it back, not using it somehow it counts, and it doesn't. The claim is clear. And we ask that the Court adopt our constructions.

And we think the issue -- if our constructions are adopted, we think it is dispositive on summary judgment. Because Dr. McClellan was asked -- and this is in the briefing -- did BearBox's system consider this kind of scenario? And he said no. It's an nonsensical scenario. BearBox's system looks at this from the point of view of the Bitcoin miner. And is it more profitable for me than a Bitcoin miner to sell my power back to the grid or -- or to the wind farm or to mine Bitcoin. The option to the extent there even is one is with the Bitcoin mine in his system. He has never thought of any of this. Whereas it's clear from the patent that the option is with the power entity,

indication from the specification that says a minimum power threshold may be zero. But I think what we can do is point to the claim construction itself, it sort of takes care of the notion that it can't all be zeros by the fact that the last limitation contemplates providing an instruction to perform one or more computational operations.

I think that means that there's got to be at least some value for at least one minimum power threshold in the set of minimum power thresholds.

THE COURT: Okay.

All right. Anything else?

MR. HORTON: I think that's all, Your Honor.

THE COURT: All right.

Mr. Nelson, anything else?

MR. NELSON: One second. My co-counsel is writing here, so I'm not sure...

(Discussion held between counsel off the record.)

MR. NELSON: No, Your Honor.

THE COURT: All right. The Court is going to take the arguments under advisement.

Thank both counsel for your presentations today.

One thing that I will ask the parties to do is to meet and confer about the proposed compromise on power option agreement and get back with me, let's say, by end of

the day on Monday to let us know that you guys were able to reach an agreement on that. And we will hold off on issuing a ruling until we hear back from you on that.

And I'd ask you to file something in writing. I'll ask the plaintiff, since it is your proposal, to consult with defendants and file a letter in writing by 5:00 p.m. on Monday, letting us know whether you were able to reach an agreement on that term. And we will try to get you a -- we will try to get the parties a construction on these terms as soon as we can.

MR. HORTON: Thank you, Your Honor.

MR. NELSON: Thank you, Your Honor.

THE COURT: With respect to -- just thinking in the future, with respect to trial in this matter, if we have a trial, the two inventorship claims for the Court -- is a jury issue.

I understand there's a summary judgment pending on that issue, but in the event that, you know, the possibility that those things -- we still end up with at least one bench issue and one issue for the jury to decide, have the parties given thought about whether we have just one trial and the Court decides what it has to decide and let the jury decide what it has to decide or whether we bifurcate.

Have the parties discussed it amongst

parties have had the opportunity to present their positions to the Court with the appropriate support.

MR. HORTON: Thank you, Your Honor.

MR. NELSON: May I say one thing, Your Honor, I'll be really quick, I promise.

So the claims were different, you know, when we talked about bifurcation before. And also the statement counsel made about the issues being interrelated, I'm not sure they are, because the statements that were made to overcome our preemption argument --

THE COURT: Again, I don't want to --

MR. NELSON: I'll stop there.

THE COURT: All right.

Thank you all.

ALL COUNSEL: Thank you, Your Honor.

(Whereupon, the following proceeding concluded at 11:08 p.m.)

I hereby certify the foregoing is a true and accurate transcript from my stenographic notes in the proceeding.

/s/ Michele L. Rolfe, RPR, CRR
U.S. District Court